

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STEVEN M. JOHNSON,

Plaintiff,

v.

Civil Action No. 04-12086-WGY

KATHLEEN M. DENNEHY,

Defendant.

ORDER ON APPLICATION TO
PROCEED WITHOUT PREPAYMENT OF FEES

Now before the Court is plaintiff's application to proceed without prepayment of fees and affidavit under 28 U.S.C. § 1915:

FINDINGS

A. Is plaintiff a "prisoner" as defined in 28 U.S.C. § 1915(h) and/or 28 U.S.C. § 1915A(c):

Yes ☒ No ☐

B. Is a filing fee under 28 U.S.C. § 1915(b) to be assessed at this time:

1. Yes ☐ Plaintiff is obligated to pay the entire statutory filing fee immediately. See 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1914 (\$150.00 for a civil action).
2. Yes ☒ An initial partial filing fee of \$ 13.66 is assessed pursuant to 28 U.S.C. § 1915(b)(1). The remainder of the fee \$ 136.34 is to be assessed in accordance with 28 U.S.C. § 1915(b)(2).
3. Yes ☐ Plaintiff has proffered evidence of being without funds for six months and being currently without funds. Under 28 U.S.C. § 1915(b)(2), plaintiff is assessed an obligation to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account until the \$150.00 filing fee is paid in full.
4. No ☐ Plaintiff is not assessed an initial partial filing fee or obligation to make monthly payments at this time.

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ORDERS

Based upon the foregoing:

1. The application to proceed without prepayment of fees is GRANTED.
Yes ☒ No ☐
2. If a filing fee assessment has been made under paragraph B above, is it a provisional finding that is subject to early modification:
Yes ☒ No ☐

If the above answer is Yes, the following applies:

If the plaintiff files, within 35 days of the date of this Order, a certified copy of his/her prison trust account or a statement signed by plaintiff under the pains and penalties of perjury demonstrating eligibility to proceed in this action without paying an initial partial filing fee or without payment of any fee assessed above, the Court will consider the certification or statement in determining whether to modify any fee assessment under 28 U.S.C. § 1915(b)(2).

3. The Clerk shall send a copy of this Order to the institution having custody of plaintiff:
Yes ☒ No ☐

Having completed the screening on the merits of plaintiff's complaint pursuant to Sections 1915(e)(2) and/or 1915A:

1. The complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted:

No ☐ Yes ☒ as to defendant(s)
Kathleen Dennehy

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2. The complaint seeks relief from a defendant or defendants who are immune from such relief:

No ☐ Yes ☒ as to defendant(s)
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3. Section 1997e(g)(2) provides that:

"The court may require any defendant to reply to a complaint brought under this section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits."

42 U.S.C. § 1997e(g)(2).

Is the complaint sufficient to satisfy the pleading requirements for stating a cognizable claim and does the plaintiff have a reasonable opportunity to prevail on the merits against one or more defendants?

- a. Yes ☐ The Court has so determined and found as to defendant(s):

- b. No ☒ because the Court has determined that the complaint does not satisfy pleading requirements for stating a cognizable claim against:

☐ all defendants ☒ the defendant(s)
Kathleen Dennehy

- c. No ☐ because the Court has determined that the likelihood that plaintiff will prevail on the merits falls short of the "reasonable opportunity" standard of the statute, as to claims against:

☐ all defendants ☐ the defendant(s)

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d. Cannot say

☐ It is not feasible for the Court to make a determination on
these questions on the present record as to claims against:

☐ all defendants ☐ the defendant(s)

Based upon the foregoing:

1. The Clerk shall issue summonses and the United States Marshal serve a copy of the complaint, summons and this order as directed by the plaintiff with all costs of service to be advanced by the United States?

No ☒

Yes ☐

☐ as to all defendants

☐ only as to defendant(s)

2. The Clerk shall dismiss this action unless, on or before the 42nd day from the date of this Order, plaintiff has filed a submission showing good cause why the Court should find that the pleading is sufficient to state a cognizable claim and that plaintiff will have a reasonable opportunity to prevail on the merits of plaintiff's claims against defendant(s)?

No ☐

Yes ☒

☒ as to all defendants

☐ only as to defendant(s)

3. a. Although defendant(s) may not have been served with a summons and complaint, are the defendant(s) invited but not required to file an answer to aid the Court in reaching a prompt final disposition on the merits?

No ☒

Yes ☐

☐ as to all defendants

☐ only as to defendant(s)

OR

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- b. If the defendant(s) have been served with a summons and complaint, are the defendant(s) required to reply within the time specified in the summons?

No ☐ Yes ☐ ☐ as to all defendants
☐ only as to defendant(s)

10/15/2004
DATE

s/ William G. Young
UNITED STATES DISTRICT JUDGE